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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/549,348
Filing Date: September 14, 2005
Appellant(s): THELEN ET AL.

Thomas J. Onka
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 17 March 2009 appealing from the Office action mailed 14 August 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest in contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|-----------|---------|
| 7,127,496 | Isozu | 10-2006 |
| 7,103,906 | Katz | 9-2006 |
| 6,829,781 | Bhagavath | 12-2004 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 4, 5, 8, 9, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Isozu (US 7,127,496).

Regarding claim 1, Isozu teaches a method for transmitting a user-specific program to a user of a program content transmission system (1), i.e. sending user-selected data to a PC or a PDA (Fig. 7; Col. 9, line 35-Col. 10, line 61),

in which first a part of the program content (P) of the program is transmitted to a first terminal unit (A) of the user (Col. 9, lines 39-67) and

the program transmission to the first terminal unit (A) is stopped in accordance with a pre-determined procedural sequence when a first defined event occurs and then, i.e. pause message is generated at terminal A and sent to the gateway (Col. 9, line 64-Col. 10, line 15),

when a second defined event occurs, the program content (P') is further transmitted to a second terminal unit (B) of the user to continue the program transmission in accordance with a predetermined procedural sequence, i.e. a resume request is sent to the gateway (Col. 10, lines 15-61);

wherein the user-specific program and/or the program contents are adapted before the continuation of the transmission to the second terminal unit (B), i.e. destination address is changed from terminal A to terminal B (Col. 12, lines 4-36).

Regarding claim 2, Isozu teaches in that the first defined event comprises the reception of a transmission stop signal (US) and/or the second defined event comprises the reception of a transmission continuation signal (UF) from an end

device (A, B) of the user, i.e. gateway receives a pause message and a resume request (Col. 9, line 64-Col. 10, line 61).

Regarding claim 4, Isozu teaches in that when the first event occurs first the transmission of a running program content section is terminated before a transmission stops, i.e. when a pause message is received, the gateway stops transmitting the program to terminal A, but continues to receive and cache the transmission of the program from the source (Col. 11, lines 21-33).

Regarding claim 5, Isozu teaches in that the running program content section is terminated in abridged form before the transmission stop, i.e. transmission from the gateway to terminal A is stopped in the middle of a program (Col. 11, lines 58-67).

Regarding claim 8, Isozu teaches in that the user-specific program (P) is reorganized before the transmission is continued, i.e. the destination address for the received content is changed (Col. 10, lines 49-62; Col. 12, lines 24-37).

Regarding claim 9, Isozu teaches in that the adaptation and/or reorganization of the user specific program takes place on the basis of a user-specific (NP) and/or device profile (GP), i.e. the address of terminal B replaces the address of terminal A as the destination address (Col. 10, lines 27-61).

Regarding claim 11, Isozu teaches a terminal unit (A, B), comprising a receiving facility (7) for the reception of program contents (P, P'), of a user-specific program assigned to the user of the terminal unit (A, B) of a program content transmission system (1), i.e. desktop PC, Notebook PC, or PDA (Fig. 1, el. 102, 103, 104; Col. 1, lines 34-48; Col. 5, lines 38-56) and comprising a module (6) for communicating a transmission stop signal (US) and/or a transmission continuation signal (UF) to the program content transmission system, i.e. a Pause message is generated and sent from terminal A to the gateway and a Resume request is generated and sent from terminal B to the gateway (Col. 9, line 64-Col. 10, line 61).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Isozu in view of Katz (US 7,103,906).

Regarding claim 3, Isozu teaches all elements of claims 1 and 2.

Isozu teaches inserting a time stamp in Real-Time Protocol Packets (Col. 6, lines 6-20).

Isozu does not clearly teach in that a time stamp is put in the program when the first event occurs or when the transmission is stopped and the transmission of the further program content (P') begins when the second event occurs at this time stamp or at a pre-determined distance before this time stamp.

Katz teaches in that a time stamp is put in the program when the first event occurs or when the transmission is stopped, i.e. terminating transmission of the presentation and recording the time stamp in a bookmark at a media-on-demand server when program viewing is going to be interrupted and resumed at a later time (Col. 7, line 65-Col. 8, line 45; Fig. 4, el. 425, 430; Col. 10, lines 54-67), and the transmission of the further program content (P') begins when the second event occurs at this time stamp or at a pre-determined distance before this time stamp, i.e. the transmission resumes on the same or a different client device at the point where viewing stopped or 10 seconds prior (Col. 9, lines 47-59; Col. 10, lines 54-67; Col. 12, lines 1-16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Isozu to include inserting a time stamp in the program, as taught by Isozu, when the first event occurs or when the transmission is stopped and beginning the transmission of the further program content when the second event occurs at this time stamp or at a pre-determined distance before this time stamp, as taught by Katz, for the purpose of providing a short overlap of the point where the viewing of the program stopped.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Isozu in view of Bhagavath (US 6,829,781).

Regarding claim 6, Isozu teaches all elements of claim 1.

Isozu does not clearly teach in that at the continuation of the program first there is a continuation prelude and/or a summary of at least a part of the program contents (P) transmitted before the transmission stop.

Bhagavath teaches a summary of at least a part of a program content is created while the viewer is away from the television (Col. 6, lines 7-28; Col. 8, lines 56-67) or can be requested from a repository (Col. 3, lines 46-65).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Isozu to include a continuation prelude and/or a summary of at least a part of the program contents transmitted before the transmission stop at the continuation of the program, as taught by Bhagavath, for the purpose of viewing a summary of a missed portion of a program (Bhagavath-Col. 6, lines 15-27).

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Katz (US 7,103,906) in view of Isozu.

Regarding claim 10, Katz teaches a program content transmission system (1), i.e. user-controlled, multi-device, media-on-demand system (Fig. 1; Col. 5, lines 19-52; Col. 10, lines 35-67), comprising:

a program management system (3) to render user-specific programs assigned to the respective users available to the various users of the program content transmission system (1), i.e. a user viewing a program at home can use the media-on-demand system to discontinue viewing at home and resume viewing at another location on a different client device (Col. 5, lines 19-52; Col. 10, lines 35-67),

a number of transmission channels, K1, K2 for the transmission of program contents (P,P') of the user-specific programs to the terminal units, (A, B) of the particular users, i.e. client devices are connected to access networks via wired or wireless connections including Hybrid Fiber Coaxial and cable (Col. 1, lines 37-67; Col. 5, line 64-Col. 6, line 8),

a unit management system (4) to stop the program transmission to a first terminal unit (A) of a user in accordance with a pre-determined procedural sequence when a first defined event occurs and, when a second defined event to continue the program transmission in accordance with a pre-determined procedural sequence occurs, to cause a continuation to take place of a transmission of program contents (P') to a second terminal unit (B) of the user, i.e. user can interrupt delivery of the delivered media to a client device and then resume delivery on another client device using the media-on-demand system (Col. 5, lines 19-52; Col. 10, lines 35-67).

Katz does not clearly teach wherein the user-specific program and/or the program contents are adapted before the continuation of the transmission to the second terminal unit (B).

Isozu teaches a user-specific program and/or program contents are adapted before the continuation of the transmission to a second terminal unit (B), i.e. destination address is changed from terminal A to terminal B (Col. 12, lines 4-36).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Katz to include the user-specific program and/or the program contents are adapted before the continuation of the transmission to the second terminal unit (B), as taught by Isozu, for the purpose of giving the user a better viewing experience by providing a near seamless viewing of a movie or other video.

(10) Response to Argument

A. Rejection of Claims 1, 2, 3, 4, 5, 8, 9, and 11

a. In response to Appellant's arguments that the given reference does not teach "the user-specific program...second terminal unit", Page 7, lines 12-14, the examiner respectfully disagrees. Isozu teaches a method of switching audio/video reception terminals while continuously receiving data on a first terminal by changing the processing status so that the data can be continuously received on a second terminal (Abstract). While transmitting an audio/video

stream to a terminal A, the stream is paused by sending a pause request to the gateway. While paused, the stream destination address is changed to a terminal B (Col. 5, lines 34-39; Col. 12, lines 4-36). The gateway receives a resume request and the stream is redirected to the terminal B. Therefore, the program and program content are being adapted, i.e. destination address changed, before the continuation, i.e. while being paused at the gateway, of the transmission to the second terminal unit, e.g. terminal B.

b. As to the argument stating the "Examiner maintains that a destination address is program content", Page 9, lines 14-15, the examiner respectfully disagrees. The examiner has not made any statement equating a destination address and program content. The claimed adaptation of the program and/or program content to a second terminal unit is accomplished when the destination address is changed to the second terminal unit. The program/program content is subsequently received and rendered by the second terminal unit.

c. Appellant further argues that "an applicant can be his or her own lexicographer", Page 9, lines 23. "Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into a claim limitations that are not part of the claim. For example, a particular embodiment appearing in the written description may not be read into a

claim when the claim language is broader than the embodiment." *Superguide Corp. v. DirecTV Enterprises, Inc.*, 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004). See also *Liebel-Flarsheim Co. v. Medrad Inc.*, 358 F.3d 898, 906, 69 USPQ2d 1801, 1807 (Fed. Cir. 2004)

MPEP 2111.01 section IV states an "applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s)" (emphasis added). The MPEP goes on to state that the "inventor may define specific terms used to describe invention, but must do so 'with reasonable clarity, deliberateness, and precision'" (emphasis added). The appellant's definition of "adapted" is not clearly set forth in the disclosure. According to appellant's specification, "adapted" is loosely defined on Page 6, lines 10-13: an "adaptation of the program to the new terminal unit may imply for example...", lines 21-23: an "adaptation to the appliance can also comprise...", and Page 7, lines 3-7: an "adaptation of the program to other conditions of use, for example to differently used transmission channels". It appears as though the term has multiple non-restricting definitions covering multiple embodiments and therefore does not constitute a clear re-definition of the term "adapted". Consistent with the specification, the rerouting of the program content via rewriting/updating the destination address constitutes other conditions of use (ex. use there - instead of

here) prior to the resumption of distribution given that the packetized program and program content are adapted by the rewriting/updating process.

B. Rejection of Claims 3, 6, and 10

No particular arguments are presented over and above those previously raised/addressed. Accordingly, the examiner respectfully disagrees that these claims should be found likewise patentable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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02 June 2009

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